

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

1259 POST LLC,

Plaintiff,

v.

EMCASCO INSURANCE COMPANY,  
et al.,

Defendants.

---

Case No. 1:20-cv-626

Hon. Hala Y. Jarbou

**ORDER**

This is a purported class action diversity case alleging breach of contract. Plaintiff filed a complaint in July 2020. (ECF No. 1.) Defendants moved to dismiss for lack of subject matter jurisdiction in September 2020. (ECF No. 10.) Their motion argued that Plaintiff failed to properly allege diversity of citizenship because, as an LLC, Plaintiff has the citizenship of its members and thus the citizenship of all members must be alleged. *See V & M Star, LP v. Centimark Corp.*, 596 F.3d 354, 356 (6th Cir. 2010) (quoting *Delay v. Rosenthal Collins Grp., LLC*, 585 F.3d 1003, 1005 (6th Cir. 2009)). Plaintiff's complaint contained no allegations about its members.

Plaintiff filed an amended complaint, rendering Defendants' motion to dismiss moot. (ECF No. 15.) Remarkably, the amended complaint fails to cure the facial—and fatal—deficiency raised by Defendants' motion to dismiss. The Court is inclined to dismiss the complaint *sua sponte*. However, “[b]efore dismissing a [case] *sua sponte*, even if the dismissal is without prejudice, the court must give notice to the plaintiff.” *Chase Bank USA, N.A. v. City of Cleveland*, 695 F.3d 548, 558 (6th Cir. 2012). The Court now gives notice and will afford Plaintiff an opportunity to amend its complaint.

Accordingly,

**IT IS ORDERED** that Plaintiff shall file an amended complaint properly alleging diversity jurisdiction within seven days of the date of this order. Failure to do so, or failure to file a complaint satisfying the requirements of diversity jurisdiction, will result in dismissal.

Dated: April 23, 2021

/s/ Hala Y. Jarbou  
HALA Y. JARBOU  
UNITED STATES DISTRICT JUDGE